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Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Report of the Secretary-General

I. Introduction

1. The General Assembly, by resolution 52/123 of 12 December 1997, on the effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, *inter alia*: called upon the Secretary-General to make available, at the request of Governments concerned, qualified expertise on minority issues, including the prevention and resolution of disputes, to assist in existing or potential situations involving minorities; requested the High Commissioner to continue her efforts to improve the coordination and cooperation among United Nations programmes and agencies on activities related to the promotion and protection of the rights of persons belonging to minorities; urged all treaty bodies to give due regard, within their respective mandates, to the promotion and protection of the rights of persons belonging to minorities; called upon all special representatives, special rapporteurs and working groups of the Commission on Human Rights to continue to give attention, within their respective mandates, to situations involving minorities; and encouraged intergovernmental and non-governmental organizations to continue to contribute to the promotion and protection of the rights of persons belonging to minorities.

2. By the same resolution, the Assembly requested the Secretary-General to report to it at its fifty-fourth session on the implementation of the resolution. The present report is submitted to the General Assembly in pursuance of that request.

II. Provision of qualified expertise on minority issues

3. Under the leadership of the High Commissioner for Human Rights, the programme of advisory services and technical cooperation is aimed at assisting Governments, at their request, in promoting and protecting human rights at the national and regional levels. In the area of minority protection, Governments may request expertise on minority issues, including the prevention of disputes, to assist in the existing or potential situations involving minorities.

4. Although there was no specific request for assistance in the area of minority protection during the period under review, a number of projects undertaken are relevant and

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focus primarily on the strengthening of national institutions for the promotion and protection of human rights, human rights training of law enforcement officials, the legal community and members of civil society, including non-governmental organizations. The following projects have an indirect impact on greater respect for minority rights: the provision of assistance aimed at the effective functioning of the National Human Rights Office in Latvia; the provision of expertise to key institutions in South Africa (Human Rights Commission on Restitution of Land Rights, and Ministry of Safety and Security); the organization of a seminar for human rights non-governmental organizations and workshops for governmental officials, non-governmental organizations, educators and the legal community in Armenia; human rights training for national police agencies in Eastern Slavonia, Croatia; the provision of practical assistance to the Parliament and relevant ministries in finalizing a national plan of action in the field of human rights and establishing a national human rights institution in Azerbaijan; and the organization of a national training workshop for human rights non-governmental organizations and the Government of the Russian Federation on the human rights treaty system.

III. Cooperation of the Office of the High Commissioner for Human Rights with United Nations agencies and programmes on activities related to the promotion and protection of minority issues

5. Collaboration and cooperation between the Office of the High Commissioner for Human Rights and the United Nations agencies and programmes has, during the period under review, been strengthened within the framework of the Working Group on Minorities of the Subcommission on Prevention of Discrimination and Protection of Minorities. During the fourth and fifth sessions of the Working Group, held from 25 to 29 May 1998 and 25 to 31 May 1999, respectively, a number of agencies shared information on their activities with the participants.

6. The work of the International Labour Organization (ILO) with regard to the implementation of minority rights centred on the international labour standards and their supervision, technical assistance, and the ILO Declaration on Fundamental Principles and Rights at Work. Specific mention was made of the ILO publication on affirmative action in employment of ethnic minorities. The activities of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the area of minority protection included the UNESCO programme on the culture of peace, the promotion of linguistic pluralism, education for peace and inter-cultural dialogue, as well as the preservation of the common heritage of mankind, including traditional and popular cultures of minorities. The relevant activities of the Office of the United Nations High Commissioner for Refugees included the preparation and implementation of nationality legislation, assistance to individuals in making their claims, the training of governmental officials and staff, and addressing the root causes of population displacement. The work of the United Nations Children's Fund focused in particular on the promotion of the Convention on the Rights of the Child, *inter alia*, article 30 on the promotion and protection of the rights of children belonging to minorities. Such promotional work is being organized through schools and the media, including studies on children and families of ethnic minorities, and the strengthening of cooperation in the area of tolerance education projects. The World Health Organization (WHO) was addressing the key principles upon which fundamental human rights are based, such as equity, dignity, non-discrimination and universality. One of the major goals of WHO was therefore to address the health needs of the under-served and those who are already vulnerable to discrimination, such as minorities.

7. Further details on the activities of agencies are contained in the reports of the Working Group on Minorities on its fourth and fifth sessions (E/CN.4/Sub.2/1998/18 and E/CN.4/Sub.2/1999/21).

IV. Treaty bodies

8. During the period under review, United Nations committees continued to monitor the observance by States parties of the minority specific rights contained in international human rights instruments. These include article 27 of the International Covenant on Civil and Political Rights, on the rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion or to use their own language; articles 13 to 15 of the Covenant on Economic, Social and Cultural Rights, on the right to education and to take part in cultural life; articles 2, 5 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination on, respectively, affirmative action in respect of groups that have suffered from discriminatory practices, the elimination of racial discrimination without distinction, including on the basis of national or ethnic origin, and on effective methods in the

fields of teaching, education and culture with a view to promoting understanding, tolerance and friendship among nations and groups; and article 30 of the Convention on the Rights of the Child, on the rights of children belonging to minorities.

9. On the basis of the reports received from States parties, the committees entrusted with overseeing the effective implementation of the above-mentioned international instruments, namely, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child, adopted concluding observations on the implementation of minority-specific rights. In particular, the committees commended States parties on the measures adopted in the field of minority protection, raised a number of issues of concern in connection with the reports, and made recommendations calling upon the Governments concerned to adopt measures to improve the situation.

10. In their concluding observations, the committees welcomed the following measures adopted by States parties: the constitutional, legislative and administrative measures taken to respect and ensure the rights of persons belonging to minorities, in particular their right to develop their language and enjoy their own culture; the existence of advisory boards for minority affairs; the right of primary and secondary level students to be taught in their mother tongue; the increase in minority participation in political, administrative and cultural institutions; and the adoption of bilateral treaties concluded between States to protect respective minority groups. With regard to the non-discrimination provisions contained in the international instruments, the committees welcomed the adoption by a number of States of anti-discrimination legislation; the positive measures taken by some States in the field of law reform in order to combat various forms of racial discrimination against ethnic groups; the affirmative action policy adopted towards certain ethnic communities; the teaching of children and adolescents, and public awareness campaigns, promoting tolerance and openness towards ethnic minorities; and the prevention of discrimination against children on the basis of ethnic origin.

11. With reference to a number of the reports of State parties, the Committees expressed concern in regard to the following: a number of States parties deny the existence of minority groups within their territory; the destruction of land traditionally belonging to minority groups; the lack of education provided in minority languages; and the exclusive use of the national language in areas of public activity. With regard to racial discrimination, the Committees expressed concern at the continuing de facto discrimination against members of certain minority groups in the area of housing, health and employment; the denial of citizenship to many minority groups; and the persistence of racial hatred and acts of violence towards persons belonging to minority groups.

12. In their concluding observations, the relevant committees recommended to States parties that: racial attitudes be overcome and that the Government initiate proceedings where any pattern of discrimination is identified; education be provided in minority languages; members of minority communities be guaranteed the enjoyment of their right to cultural identity and traditional livelihood; persons belonging to minorities be given equality of treatment with the majority; minority participation in the design, organization and functioning of the educational system, in particular at the secondary and higher educational levels, and the training of teachers of minority languages in public establishments be encouraged; free compulsory education be provided; the rights of all minority groups with regard to their right to participate in national political and economic life and to practise and teach their culture be fully respected; and, measures to prevent discrimination against children belonging to minorities be reinforced.

13. Further details are available in the more recent reports of the Human Rights Committee,[1] the Committee on Economic, Social and Cultural Rights,[2] the Committee on the Elimination of Racial Discrimination[3] and the Committee on the Rights of the Child.[4]

General comment on article 12 of the International Covenant on Civil and Political Rights

14. At its sixty-sixth session, the Human Rights Committee completed consideration of its general comment on article 12 of the International Covenant on Civil and Political Rights, on the right to freedom of movement. The text of the general comment will be formally adopted by the Committee at its sixty-seventh session, to be held at Geneva from 18 October to 5 November 1999.

15. The general comment provides an interpretation of article 12 which refers to the right of everyone lawfully within the territory of a State to liberty of movement and freedom to choose his residence, the freedom to leave any country, including his own, and not to be arbitrarily deprived of the right to enter his own country.

16. A number of issues included in the general comment are of specific relevance to the rights of persons belonging

to minorities. For example, the Committee has held that an alien who entered the State illegally but whose status has been regularized, must be considered to be lawfully within the territory and should therefore be accorded the same rights as those accorded to nationals. Article 12 has also been interpreted as implying the right to reside in a place of one's choice within the territory, which includes protection against all forms of forced internal displacement, exclusion and expulsion. Freedom of movement may, however, be limited with regard to the wish to settle in areas inhabited by minority communities. Furthermore, no restrictions on the right to freedom of movement may be made on the basis of distinctions of any kind, including on the basis of language, religion, national or social origin. Finally, the right to enter one's own country implies prohibition of enforced population transfers or mass expulsions to other countries and a State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.

V. Special rapporteurs and special representatives

Special Rapporteur on the question of religious intolerance

17 The Special Rapporteur on religious intolerance, Abdelfattah Amor, in his report on incidents and governmental action in all parts of the world inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (E/CN.4/1999/58 and Add.1-2), continued to provide information on the respect of the rights of minorities to profess and practise their own religion.

18. In his report, the Special Rapporteur classified the communications received during the period under review as follows:

(a) Violations of the principle of non-discrimination in matters of religion and belief: *Islam*: Afghanistan; *Scientology*: Germany; *non-Muslims*: northern part of Cyprus; *Protestant Churches*: Spain; *Sunni*: Islamic Republic of Iran; and *religious minorities other than the Russian Orthodox Church*: Turkmenistan;

(b) Violations of the principle of intolerance in matters of religion and belief: *Islam*: Afghanistan, Bulgaria, Myanmar; *Jehovah's Witnesses*: Azerbaijan, Bulgaria; *Christians*: Azerbaijan, Bulgaria, Egypt, Malaysia, Myanmar, Sri Lanka; *non-Muslims*: northern part of Cyprus; *Sunni*: Islamic Republic of Iran; *Protestant Churches*: Mexico, Sri Lanka; *Hinduism*: Sri Lanka; *religious minorities other than the Russian Orthodox Church*: Turkmenistan;

(c) Violations of freedom of thought, conscience and religion or belief: *Baha'is*: Islamic Republic of Iran; *non-Muslims*: Mauritania;

(d) Violations of freedom to manifest one's religion or belief: *Christians*: Saudi Arabia, Uzbekistan, Lao People's Democratic Republic, Sudan; *Buddhism*: China, Greece, Kazakhstan; *Jehovah's Witnesses*: Russian Federation; *Baha'is*: Islamic Republic of Iran; *Shiites*: Malaysia; *Judaism*: Latvia; *religions not officially recognized by the State*: Republic of Moldova, Democratic People's Republic of Korea;

(e) Violations of freedom to dispose of religious property: *Principal religious communities*: Albania, Belarus, Eritrea, Georgia; *non-Muslims*: northern part of Cyprus; *Christians*: Morocco, Myanmar, Romania; *Islam*: Myanmar; *Catholic Church*: Ukraine;

(f) Violations of physical integrity and health of persons (religious figures and the faithful): *Christians*: Angola, Bangladesh, Egypt, India, Indonesia, Morocco, Lao People's Democratic Republic, Pakistan, Sudan, Turkey, Yemen, Uzbekistan; *Buddhism*: Bhutan, China, Indonesia, Sri Lanka; *Jehovah's Witnesses*: Russian Federation, Georgia, Kazakhstan; *Baha'is*: Islamic Republic of Iran; *Shiites*: Iraq; *Muslims*: Sri Lanka;

(g) Violations affecting women belonging to minorities: *Islam*: Afghanistan, India; *trokosi (slaves of God)*: Ghana.

19. In his conclusions and recommendations, the Special Rapporteur pointed out that although there was a decline in anti-religious State policies and the manipulation of religion in the interest of a political ideology, an upsurge of State policies directed against minorities in matters of religion and belief, and in particular against unrecognized minorities, namely, sects or new religious movements, was noticed.

20. In his report on his visit to Viet Nam (E/CN.4/1999/58/Add.2), the Special Rapporteur collected information on the main religious communities in Viet Nam, namely, Buddhist, Catholic, Protestant, Islamic, Cao Dai and Hoa Hao.

21. In that report, the Special Rapporteur noted that it was not possible, in Viet Nam, to establish and maintain religious communities freely and independently, with the exception of the Catholic Church and most of the Protestant

denominations. With regard to the Buddhist, Hoa Hao, Cao Dai and Muslim communities, the standard practice seemed to be to establish organizations which are controlled by the authorities and/or, which have chosen to accommodate their concerns. Consequently, the unofficial organizations are prohibited from carrying out any religious activities, subject to penalties by the authorities in the form of various measures, including surveillance, harassment, house arrest, administrative detention, prison, re-education camp, and confiscation of religious property.

22. The Special Rapporteur, in his report, drew the attention of the international community to the fact that all of the religious communities are prevented from conducting their religious activities freely and are therefore subject to interference from authorities. For example, the training of the clergy of the religious communities is subject to a *numerus clausus* and their candidatures must be approved by the authorities. The appointment of the clergy and the inauguration of the highest religious dignitaries must be approved by the authorities. The movement of clergy from different communities in order to attend religious functions in geographical areas not usually under their jurisdiction is subject to approval by the authorities, and the building and renovation of the places of worship of religious communities is subject to approval by the authorities. The Special Rapporteur also expressed concern that the religious prisoners belonging to the various religious communities (to the Special Rapporteur's knowledge, Buddhist, Catholics, Cao Dais, Hoa Haos and Protestants) were deprived of their religious freedom in that they were prevented from practising their religion.

23. In his conclusions, the Special Rapporteur was of the view that there should be no controls of the religious communities in Viet Nam, whatever their official status, which could potentially undermine the right to freedom of religion and belief and its manifestations, in particular through limitations, constraints, prohibitions and sanctions against religious leaders, individuals, organizations, places of worship and other religious property, publications and other activities.

Special Rapporteur on extrajudicial, summary or arbitrary executions

24. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, in her report (E/CN.4/1999/39 and Add.1) continued to: examine situations of extrajudicial, summary or arbitrary executions; respond effectively to information received; and follow up recommendations made in reports after visits to particular countries. The Commission on Human Rights requested the Special Rapporteur to pay special attention to violations of the right to life, *inter alia*, of persons belonging to ethnic minorities. In that regard, the Special Rapporteur acted on behalf of persons considered to belong to national, ethnic, religious and/or linguistic minorities in their countries.

25. During the period under review, both urgent appeals and individual allegations concerning violations of the right to life of persons belonging to minorities were transmitted to relevant Governments, including the Federal Republic of Yugoslavia, on behalf of 80 ethnic Albanians in the province of Kosovo; Sri Lanka, on behalf of more than 20 persons belonging to the Tamil minority; Iraq, on behalf of four Shia Muslims; Nepal, concerning the alleged death of a Tibetan monk; and China, where one Buddhist monk was said to have died as a result of torture. In addition, communications were sent to: Brazil, on behalf of an indigenous activist from the Xucuru population; Colombia, regarding death threats received by four indigenous activists and for the alleged killings of two other indigenous activists; Guatemala, where four individuals working for the Mayan Defence of Guatemala reportedly received death threats; Honduras, on behalf of two members of the Garifunas group; Myanmar, regarding the reports of 168 deaths of people of Karen ethnicity; and Indonesia, concerning the death of an East Timorese woman and the situation facing the ethnic Chinese minority.

Special Representative on the situation of human rights in the Islamic Republic of Iran

26. The Special Representative on the situation of human rights in the Islamic Republic of Iran, Maurice Danby Copithorne, in his report (E/CN.4/1999/32) drew attention to the fact that while the Iranian Constitution assures minorities equal status, the ordinary laws contain numerous discriminatory provisions.

27. With regard to the promotion and protection of the rights of minorities, the Special Representative recommended that the Government declare a commitment to the implementation of both the Iranian Constitution with its relevant equality provisions (arts. 14, 15, 19 and 20) and of international standards, including the application of the principles contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

28. He noted that some situations might require special attention, in particular the reported occasional clashes in areas of mixed population of Sunni and Shiites, chiefly in the western part of Azerbaijan, along the Persian Gulf and in Sistan-Baluchistan province. While such tension existed before the Islamic revolution in some areas, it appeared to have worsened significantly since that time.

29. In his report, the Special Representative welcomed the reported elimination of discrimination against Baha'i youth for enrolment in the pre-university year at the high-school level. According to reports, however, their entry to universities continued to be refused. The Special Representative expressed particular concern at the human rights situation of discrimination and even persecution of the Baha'i minority, including arbitrary detentions, arrests, raids on homes and confiscation of property. He also noted the continued restriction or denial of the freedom of the Baha'is to travel outside the Islamic Republic of Iran.

30. The Special Representative noted that the overall situation of the Baha'is had not improved and had in some aspects even deteriorated. In his conclusions, the Special Representative once again urged the Government of the Islamic Republic of Iran to fulfil his outstanding recommendations (A/53/423 and Corr.1, para. 45) as well as those of the Special Rapporteur on the question of religious intolerance (see E/CN.4/1996/95/Add.2).

Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia

31. In his report (E/CN.4/1999/42), the Special Rapporteur, Jiri Dienstbier, provided an overview of the situation and the status of minorities in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia.

32. With reference to Bosnia and Herzegovina, the Special Rapporteur noted that human rights violations were directly linked to the failure of the parties to fully implement the structure and mechanisms agreed upon at Dayton, Ohio, United States of America. The implementation of annex 7 of the agreement, providing for the return of refugees and displaced persons, had been poor, with an unacceptably low number of minority returns throughout the country. The Special Rapporteur observed that three years after the conclusion of the Dayton agreement, conditions were still deeply unsatisfactory for the return of minorities. The main obstacles to returns remained inadequate security, and failure adequately to protect economic and social rights. Another issue of concern to the Special Rapporteur was the evictions of illegal occupants, necessary for the reinstatement of returnees to their pre-war homes in Republika Srpska. The situation of persons illegally evicted from their property during the war, who remain at Banja Luka, remained practically unresolved.

33. The Special Rapporteur concluded that while some improvements in the situation of human rights could be observed, the authorities and political leaders in power in Bosnia and Herzegovina had continued to undermine efforts aimed at integrating the country, which is divided along ethnic lines. He recommended that efforts to improve security should be stepped up and property rights should be respected. A high priority should be given to the resolution of the situation of the illegally evicted persons in Banja Luka and other municipalities in the Republika Srpska.

34. With reference to the situation in the Republic of Croatia, the Special Rapporteur reported that the Government had adopted recommendations for legal reforms related to the return process, which were designed to overcome existing discriminatory legal provisions that had impeded return and repossession of property.

35. While acknowledging the progress made, the Special Rapporteur recommended that the question of tenancy rights be addressed by the Government of Croatia in order to foster the return of persons of the Serb minority to their former homes in urban areas, and that the Government should provide all housing commissions with alternative accommodations for equitable distribution. The Special Rapporteur urged the Government to undertake reconstruction and economic revitalization projects which directly benefit all ethnicities.

Special Rapporteur on the situation of human rights in Myanmar

36. The Special Rapporteur on the situation of human rights in Myanmar, Rajsoomer Lallah, observed, in his report (E/CN.4/1999/35) that the phenomenon of displacement would appear to be limited largely, if not exclusively, to ethnic minorities. The problem was not new and originated mainly from the absence of a political solution dating back to colonial times and before. The ceasefire agreements concluded in recent years were a beginning to a solution but were likely to be fruitless until serious and meaningful measures were taken to engage in a political dialogue which

included the ethnic minorities. The Special Rapporteur mentioned that none of the displaced persons living in Myanmar or in Thailand would be able to return home immediately, since their houses and land had been destroyed and a general feeling of insecurity and fear further prevented their return.

37. The Special Rapporteur pointed out that the military solution adopted by the Government in the ethnic areas had become a serious problem rather than a solution. A political solution in the ethnic areas in the context of political dialogue, recommended by the Special Rapporteur in paragraph 79 of his previous report (E/CN.4/1998/70) had become urgent in order to prevent a worsening of the situation.

Special Rapporteur on the situation of human rights in Iraq

38. In his report (E/CN.4/1999/37) the Special Rapporteur, Max van der Stoel expressed concern at the continuing violations of human rights in Iraq, including, *inter alia*, the imposition of oppressive measures directed in particular at ethnic and religious minorities. He referred specifically to the military attacks by the Government against civilian settlements in the southern governorates of Al-Nassiriya, Amara and Basra.

39. He also reported on the murders of two internationally respected Shiite religious scholars, Grand Ayatollah Shaykh Mirza Al-Gharawi and Ayatollah Shaykh Murtada Al-Burujerdi. He drew to the attention of the international community that, as a part of a policy of intimidation against the religious minorities, eight Shiite clerics had allegedly been sentenced to death.

40. With regard to the human rights situation of the Kurds of the governorate of Kirkuk, he was concerned about the continuing practices of the Iraqi Government to implement its policy of Arabization through a process of internal deportation aimed at the forced relocation of the non-Arab population, especially the Kurds, Turkmen and Assyrians living in Kirkuk. Other discriminatory measures against the non-Arab citizens and forced Arabization are believed to be applied, along with the deportation process, aimed at decreasing the proportion of non-Arab citizens in the oil-rich region of Kirkuk.

VI. Non-governmental organizations

41. Minority Rights Group (MRG) has provided information on its training sessions on the minority specific rights contained in international human rights instruments and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Minority Rights Group is an international human rights organization based in London which works to secure justice for minorities suffering discrimination and prejudice and achieve the peaceful coexistence of majority and minority communities.

42. Since the inception of the Working Group on Minorities, Minority Rights Group has held a well-established, one-week training seminar for minorities during the week prior to the sessions of the Working Group. Over the past two years, about 30 participants have attended the seminar, from countries such as Brazil, Bulgaria, Cameroon, Colombia, Costa Rica, Egypt, Estonia, Ethiopia, Georgia, Greece, India, Israel, Kenya, Myanmar, Namibia, Nepal, Nicaragua, Nigeria, Rwanda, Thailand, Ukraine and Uganda. In this connection, training materials on minority rights have been developed by Minority Rights Group, together with the Raoul Wallenberg Institute. On several occasions, the Office of the High Commissioner for Human Rights has provided trainers on United Nations mechanisms.

43. Feedback from the trainees, trainers, members of the Working Group and United Nations staff has indicated that these training sessions have considerably strengthened the minority attendance and participation in the Working Group, and increased the quality of the contributions to its deliberations. Many of the minority participants are able to arrange one-to-one meetings, outside the formal sessions, with governmental representatives and experts. Many participants have also reported that the training has helped them enter into dialogue with their Governments about minority rights issues.

44. As well as attending the training itself, the programme allows for minority participants to organize follow-up activities in their countries. This not only ensures an ongoing process, but also acts as a multiplier so that a wider range of those involved in minority community organizations are aware of the United Nations mechanisms and the potential for dialogue. Some examples of follow-up activities include awareness-raising on the rights of the Pygmy minority and encouraging them to participate in public life in Cameroon; awareness-raising of issues affecting the Niger Delta community of Nigeria; workshop on international instruments for the promotion of minority rights among the

grass-roots minority refugee community in Nepal; promoting knowledge and implementation of minority rights in Myanmar; and a series of workshops on the conformity with national laws and regulations of the situation of the tribal minorities in Thailand.

Notes

[1] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40*, vols. I and II (A/53/40).

[2] *Official Records of the Economic and Social Council, 1998, Supplement No. 2* (E/1998/22-E/C.12/1997/10); and ibid., *1999, Supplement No. 2* (E/1999/22-E/C.12/1998/26).

[3] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 18 (A/52/18)*; and ibid., *Fifty-third Session, Supplement No. 18* (A/53/18).

[4] Ibid., *Fifty-third Session, Supplement No. 41* (A/53/41).

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Macroeconomic policy questions: trade and development

International trade and development

Report by the Secretary-General

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I. Introduction

1. The present report was prepared in pursuance of General Assembly resolution 53/170 of 15 December 1998, in which the Assembly requested the Secretary-General, in collaboration with the secretariat of the United Nations Conference on Trade and Development (UNCTAD), to report to the Assembly at its fifty-fourth session on developments in the multilateral trading system and the implementation of the ministerial communiqué on market access adopted by the Economic and Social Council on 8 July 1998, as well as on other issues raised in the resolution. The reports of the Trade and Development Board provide additional information on action taken by UNCTAD, including its preparations for the Tenth United Nations Conference on Trade and Development.

II. Implementation of the ministerial communiqué on market access

2. The joint analysis carried out by the secretariats of UNCTAD and the World Trade Organization (WTO)[1] (WTO) on current market access issues is still relevant and suggests that substantial improvement of market access, especially for exports of goods and services from developing countries, should be considered a major priority for the third Ministerial Conference of WTO and new multilateral trade negotiations.

3. Peak tariffs continue to have a substantial constraining effect on market access for both agricultural and industrial products. For example, over 10 per cent of all tariffs in Canada, the European Union, Japan, the United States of America, corresponding to an aggregate 4,000 tariff lines, will continue to exceed 12 per cent *ad valorem*. One fifth of the peak tariffs of the United States of America, one quarter of those of the European Union and Japan and about one tenth of those of Canada exceed 30 per cent. Such tariff levels are particularly affecting exports of agricultural products. Thus, agricultural staple foods are subject to the highest frequencies of tariff peaks: in the European Union, they affect between 50 and 70 per cent of all meat, cereal and dairy products and, in Japan, between 40 and 90 per cent of those products. Tariffication of non-tariff barriers in agricultural trade under the agreement reached at the Uruguay Round of multilateral trade negotiations resulted in extremely high rates. The tariff quotas established for such products are often subject to peak duties and additional specifications, or benefit traditional suppliers.

4. In textiles and clothing, United States, European Union and Canadian industries continue to enjoy double protection from high tariffs and stringent quantitative restrictions on imports from developing countries. Even when all quota restrictions are removed in 2005 under the WTO Agreement on Textiles and Clothing, these industries will continue to benefit from high tariff protection.

5. In other industrial sectors, such as automobiles, other transport equipment, electronics, relatively high most favoured nation (MFN) peak tariffs are applied to major exporters of certain technologically advanced products. For example, the European Union, the United States of America and Canada apply MFN rates between 16 and 25 per cent on trucks, buses or ships. MFN tariffs are also frequently high on television receivers and tubes, video recorders and watches. The major developing country exporters of these products are frequently excluded from Generalized System of Preferences (GSP) schemes.

6. Tariff escalation decreased, but nevertheless continued, after the Uruguay Round. Rapidly rising tariffs from low rates for raw materials to higher rates for intermediate products and sometimes peak rates for finished industrial products continue to hamper vertical diversification and industrialization in developing countries, as illustrated in a recent WTO study.[2] On the other hand, a study by the Food and Agriculture Organization of the United Nations (FAO) on the impact of the Uruguay Round on tariff escalation in agricultural products in the European Union, the United States and Japan[3] found that, as a result of the Uruguay Round, nominal tariff escalation between agricultural raw materials and their processed products decreased in a number of cases. This should create some opportunities for developing countries to diversify their exports into higher value processed products. For more than half of the commodities selected, however, tariff escalation will retain an important dimension; in nominal terms, tariff wedges between raw and processed products will reach, on average, 17 per cent as compared to 23 per cent before the Uruguay Round, in nominal terms (9 per cent in the United States, 16 per cent in the European Union and 27 per cent in Japan). The effects of tariff escalation are reflected in trade. Although food processing is a major export industry for developing countries, their exports are largely concentrated on the first stage of processing. More advanced food industry exports make up only 5 per cent of the agricultural exports of the least developed countries and one sixth of those of developing countries as a whole, as compared to one third of developed countries.

7. Estimates of effective protection in industry by the UNCTAD secretariat confirm persistent and high tariff escalation in terms of effective protection for specific clothing and footwear products. Tariff escalation is, However, no longer as systematic as in the past and often concentrates on the first stage of industry and finished products.

8. With the entry into force on 1 January 1995 of the WTO Agreement, some non-tariff measures are losing their importance. The Agreement on Agriculture and the Agreement on Safeguards, for example, made it virtually impossible to resort to quantitative restrictions and voluntary export restraints. On the other hand, this prompted domestic industries to seek other measures designed to protect domestic production, notably contingent protection measures, in particular anti-dumping duties. In addition, exporters are increasingly affected by scientific non-tariff measures (e.g., sanitary and phytosanitary measures), while some of these measures are being challenged in the WTO dispute settlement mechanism.

9. Among the various contingency protection measures (often termed "trade remedies") allowed under the 1994 General Agreement on Tariffs and Trade, anti-dumping actions have become a preferred instrument to impose restrictions on imported products. This is partly owing to the nature of the agreement on anti-dumping which, while providing a series of procedural guidelines aimed at reducing the scope for arbitrariness and uncertainty, still contains many ambiguities and loopholes that make it easy for countries to impose anti-dumping duties on imports. Sectors that have been the main targets for recent anti-dumping actions are metals and metal products, chemical products, machinery and electrical equipment, plastics and plastic products, textiles and clothing, pulp of wood or of other fibrous cellulosic material, prepared foodstuffs and beverages, stone and plaster products, other manufactured products, footwear and headgear. Of the 2,329 cases initiated during the period 1987-1997, 1,021 (or 44 per cent) have reached final determination. The ratios for the key targeted sectors ranged from 37 per cent for textiles and clothing to 53 per cent for metals and metal products, and prepared foodstuffs.

10. Prior to the Uruguay Round, the four major users of anti-dumping measures were the United States, the European Union, Canada and Australia. For example, between 1 July 1985 and 30 June 1992, they accounted for more than 80 per cent of initiated cases. During the period 1987-1996, nearly 2,000 anti-dumping cases were initiated, 70 per cent of those by the United States, the European Community, Canada, Australia and New Zealand. The majority of anti-dumping cases are directed against exporters from developing countries. In 1998, of 225 initiated cases, 143 were targeted at developing countries and countries in transition.[4]

11. Since 1995, many developing countries have promulgated anti-dumping legislation, often with the encouragement of certain interests in developed countries, that wish to consolidate the anti-dumping system in WTO. Developing countries now initiate about one half of the total number of anti-dumping cases.[5] On the other hand, we may now be witnessing the worst setback in steel products since the Uruguay Round, with the return of the so-called voluntary export restrictions agreements (i.e., managed trade).

12. Countries require that domestically produced and imported goods conform to regulations on quality, health and safety, and possibly adhere to standards. The number of technical regulations and standards is constantly increasing in most countries. The number of stakeholders involved in setting-up standards and regulations is also increasing with the participation of groups, such as consumer and environmental organizations, which were previously not involved in these activities. While technical, health and safety standards and regulations are regarded as legitimate tools to which countries may resort, the risk is that they may be abused and become new tools for disguised non-tariff protection. For example, in addition to high tariff protection, developing country exports are subject to strict sanitary or phytosanitary standards. Such measures particularly affect fish, meat, groundnut products, cereals, tomatoes and other fruit and vegetables originating from certain countries or country groups.

13. Developing countries have repeatedly expressed their concern about the way in which international standards are developed and approved, pointing out how limited their participation is from the point of view of both number and effectiveness. As a consequence of the inadequacy of the process, it is often inappropriate to use international standards as a basis for technical regulations in developing countries, and those countries confront problems when they have to meet regulations in the importing markets developed on that basis. This leads to reduced export opportunities for many developing countries.

14. Other areas of concern to developing countries relate to the proof of sound scientific evidence of their own sanitary and phytosanitary measures, market access restrictions resulting from pests and diseases existing elsewhere in the country concerned (but not in the region of

the exporter) or, more generally, the potential trade and/or economic impact of sanitary and phytosanitary measures and technical barriers applied against their exports.

15. A major achievement of the Uruguay Round was the Agreement on Textiles and Clothing which established a schedule to dismantle over a ten-year transition period the long-standing discriminatory trade regime built up under the Multifibre Arrangement (MFA). Over the first three years of the transition period, no quotas have been removed by the major importing countries (with one exception, in Canada, for work gloves). In parallel to the progressive phasing out of MFA quota restrictions, the imposition of discriminatory quantitative restrictions is still permitted under the transitional safeguard provisions of article 6 of the Agreement on Textiles and Clothing, under certain specific conditions. The manner in which the transitional safeguard mechanism was applied has in several cases been challenged under the WTO dispute settlement mechanism. During the period 1987-1997, there were about 157 anti-dumping investigations related to textiles and clothing, with most of them initiated since 1993.

16. Despite considerable improvements achieved under the General Agreement on Trade in Services (GATS), one of the limitations to market access in services trade is the economic needs test. The test implies that the relevant governmental agency would grant market access, depending on its assessment of the economic needs of the population or its demand for or capacity to supply such services. Owing to its discretionary nature (especially where criteria are not clearly specified), the economic needs test poses a major barrier to trade in services and leaves considerable uncertainty as to the level of market access commitment. Economic needs tests are prevalent in limiting market access with respect to the movement of persons, but are also applied to investment (i.e., commercial presence commitments). Economic needs tests detract from the potential contribution of GATS to improving and securing the overall climate for investment and facilitating the movement of persons associated with the process of globalization. Another area in which developing countries face market access barriers in countries members of the Organisation for Economic Cooperation and Development (OECD) is related to the movement of business visitors. Cumbersome administrative procedures and requirements, delays or unreasonable criteria associated with the issuance of visas where no work permits or economic needs tests are required, still present a barrier to the movement of business persons. This can have serious repercussions for the competitiveness of firms seeking business contracts, contacts or investment opportunities, or wishing to set up a new business.

III. Developments in the multilateral trading system

17. Despite the financial crisis and slower economic growth throughout the world, there were no major trade policy reversals in 1998 and the first part of 1999, even in those countries most directly affected by the crisis.[6] Protectionist tendencies were gaining strength, however, in particular in some major developed countries.[7] Nevertheless, there was a broad consensus among policy makers in both developed and developing countries that protectionism would be the worst possible response to the current crisis and should be resolutely resisted.

18. The preparatory process pursued by the General Council of WTO since September 1998 is aimed at defining the future work programme of the organization, which will include further trade liberalization objectives and the preparation of recommendations to the third WTO Ministerial Conference, to be held in Seattle, Washington, United States of America, from 30 November to 3 December 1999. As defined in the WTO Ministerial Declaration of 20 May 1998 (WT/MIN(98)/DEC/1), the preparatory work has been focused on a number of areas: (a) issues and proposals relating to the implementation of the WTO agreements; (b) issues and proposals relating to already mandated negotiations on agriculture and services and built-in agenda in other areas; (c) issues and proposals relating to the follow-up to the High-Level Meeting on the least developed countries in 1997; (d) issues and proposals relating to other possible work on the basis of the programme initiated at the WTO Ministerial Conference held in Singapore in 1996, such as new issues;[8] and (e) any other matters. Additional input to the preparatory process are expected from the work programme on electronic commerce and from discussions on issues where there is expectation that decisions or agreements could be reached at a time of the third Ministerial Conference. The latter category may, *inter alia*, include ministerial decisions regarding: (a) duty-free access for products exported by the least developed countries; (b) coherence of global economic policy-making, (i.e., coordination of activities among WTO, the Bretton Woods institutions, UNCTAD, the United Nations Development Programme (UNDP) and other international organizations; and (c) transparency in government procurement.

19. As at 29 July 1999, around 100 proposals had been submitted in the WTO preparatory process, of which about 40 per cent came from developing countries. The most active countries were: Australia, 14 proposals, of which 10 related to agriculture; India, 10 proposals; the European Union, 10

proposals; and Japan, 11 proposals. The following five subjects attracted the most proposals: agriculture, 17 proposals, of which 3 were from developing countries; GATS, 10 proposals, of which 5 were from developing countries; industrial tariffs, 8 proposals, of which one was from a developing country; trade-related intellectual property rights, 6 proposals, of which 3 were from developing countries; and regional trade agreements, 6 proposals, of which one was from a developing country. The need for the new round of negotiations with a broad-based and balanced agenda, which would be concluded within a three-year time-frame, was agreed to by developed countries.[9] Some developed and developing countries[10] have also adopted the same line by proposing the launch of a comprehensive new round of multilateral trade negotiations during the WTO preparatory process. The main argument of the proponents for launching the new round is to keep momentum of trade liberalization against the protectionist pressures which are becoming stronger around the world.[11]

20. Several developing countries, however, including Brazil, Egypt, India and Pakistan, still consider that the work of WTO should focus on the full implementation of the results and built-in agenda of the Uruguay Round, which foresaw new negotiations only on agriculture and trade in services. These developing countries indicated that there was no consensus on structuring the future WTO work programme as another round of multilateral trade negotiations.[12] Other matters of priority for many developing countries were, *inter alia*: (a) the implementation of special and differential treatment in their favour as envisaged in various WTO agreements; and (b) correction of imbalances in several WTO agreements, including those on subsidies and countervailing measures, anti-dumping, trade-related intellectual property rights and trade-related investment measures, which have major implications for the development policies and/or export interests of developing countries.

21. The concerns of developing countries are largely threefold. First, they stress that the Uruguay Round and its implementation process did too little to improve market access for developing country exports of goods and services. Second, many developing countries consider that the new WTO rules are unbalanced in several important development-related areas, such as the protection of intellectual property rights and the use of industrial subsidies, while special and differential treatment for the developing countries in the WTO agreements has been inadequate and needs revision. Third, weaker human and institutional capacities, as well as lack of financing, have not permitted many developing countries to use the WTO system to pursue their trade interests, in particular its dispute settlement mechanism, or to comply fully with their multilateral obligations. The effective participation of developing countries in new multilateral trade negotiations will require not only their ability to formulate and effectively pursue proposals in each agreed area of the negotiations, but also the political will of their developed partners to treat all issues of interest to developing countries on an equal basis, thus opening the way to meaningful solutions for developing countries.

22. Civil society, in both the developed and developing countries, is nowadays aware of how such negotiations can affect daily lives; this will put a harsh spotlight on the talks, making negotiations this time inevitably more difficult. Rightly or wrongly, WTO is regarded by many in the public with considerable suspicion, as the agent of a globalization process that could threaten acquired social rights, the environment, employment and cultural identity. In some developing countries, elements of civil society, which is becoming stronger and more influential, have organized action against aspects of the implementation of some WTO agreements. At the same time, UNCTAD studies of private sector attitudes in selected developing countries indicate that there is not such a clear idea of how to make effective use of WTO as a means of increasing exports. The business community in many developing countries does not possess a sufficiently clear idea as to how the multilateral trading system can serve its interests. The support of domestic business interests and civil society in general would be crucial in achieving the effective participation of many developing countries in the negotiations.

23. A positive trade agenda for developing countries in future multilateral trade negotiations should be aimed at placing all agreed issues and subjects for negotiation in terms of development priorities and concerns. The secretariat of UNCTAD has devoted considerable attention during the year 1998-1999 to the formulation of the positive agenda for developing countries in new multilateral trade negotiations. For example, with savings resulting from improved overall cost-effectiveness approved by the General Assembly (A/52/898 and Corr.1, para. 24 (a)), three UNCTAD interregional workshops on the positive agenda were organized for representatives of developing countries at Seoul, from 8 to 10 June 1999, Pretoria, from 29 June to 2 July 1999 and in the Dominican Republic, from 2 to 4 August 1999. The secretariat of UNCTAD also organized a high-level workshop for the least developed countries at Sun City, South Africa, from 21 to 25 June 1999. That workshop resulted in proposals agreed to by the least developed countries, covering all substantive areas in the

WTO preparatory process.[13] In addition, the UNCTAD secretariat was increasingly interacting with academia in developing and developed countries to pursue positive agenda activities.

IV. Elements of a positive trade agenda

24. Significant tariff barriers in the form of high tariff peaks (exceeding 12 per cent but, in some cases, reaching 300 per cent and above) continue to affect agricultural and industrial products of export interest to developing countries. Tariff escalation continues to affect trade in such sectors of export interest to developing countries as metals, textiles and clothing, leather and rubber products and, to some extent, wood products and furniture. Accordingly, the removal of such high tariff protection in industrial countries should be given priority and seen as an integral part of future liberalization measures if such liberalization is to have any credibility and widespread political support. In addition, duty-free access should be extended to all imports from the least developed countries, as has been proposed by the European Union in the WTO preparatory process.[14]

25. Abuse of anti-dumping actions as well as other trade contingency measures and their concentration in specific sectors of export interest to developing countries are viewed by developing countries as tending to compromise their benefits from trade liberalization. Although the WTO agreement provides for special regard and exploration of constructive remedies before applying anti-dumping measures to the exports of developing countries,[15] there is no evidence that this has been translated into practice.

26. In agriculture, trade by developing countries remains severely hampered by the massive domestic support and export subsidy programmes in developed countries, peak tariffs and difficulties in the implementation of the tariff quota system. The recent signs of renewed export subsidy competition call for much more stringent disciplines than those contained in the Uruguay Round commitments, leading to the full elimination of export subsidies. The continued reform of agricultural trade will also have to take account of non-trade concerns such as food security and specific problems faced by net food-importing developing countries. Moreover, different outcomes should be envisaged in the negotiations in order to reflect the social impact of agricultural trade liberalization in developing countries where the large majority of the population is employed directly or indirectly in the agricultural sector as compared to those countries (mainly developed) where such employment is well under 10 per cent. The general direction of negotiations should be towards the full integration of agricultural trade into the framework of normal rules under WTO.

27. In the area of trade in services, it is important to ensure that the architecture of the General Agreement on Trade in Services (GATS) remains intact. GATS provides flexibility for developing countries in opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign suppliers, attaching access conditions, *inter alia*, to strengthen supply capacity. In this way, GATS legitimizes the possibility of using such performance requirements as local content, export performance, transfer of technology, training and employment, and other means, such as joint venture requirements, to meet development objectives. It also provides for the increasing participation of developing countries in world trade in services (article IV of GATS) to be facilitated through negotiated specific commitments, and access to information networks, distribution channels and technology.

28. The effective implementation of article IV of GATS should be assigned priority in the next round of negotiations. Trade in services of developing countries continues to be hampered by restrictions imposed on the movement of natural persons, coupled with other barriers. GATS has provided a framework for the liberalization of commercial presence and investment and can play the same role in the movement of persons and electronic commerce. Commitments relating to mode of supply of movement of natural persons should become sector- and category-specific, and economic needs tests should be removed or specific criteria drawn up for their use. Facilitated access to mutual agreements concluded between developed countries on the recognition of professional qualifications and any other agreement facilitating movement of persons among developed countries should be extended to developing countries. Improved access of service suppliers from developing countries to information networks, distribution channels and technology are still concepts with no agreed operational meaning.

29. Studies by UNCTAD have found, for example, that all countries could benefit from liberalized trade in environmental services, if commitments by developing countries were to be accompanied by increased access to financial resources to import such services and technical assistance in drawing up environmental regulations. Increased trade in health services could provide developing countries with resources to strengthen their own health sectors, but only if a series of supporting conditions relating

to domestic regulations, insurance portability, recognition of qualifications were met. National social, cultural and development objectives, as reflected in service policies, can be compatible with liberalization if carried out within an appropriate framework of legislation and regulations. In most service sectors, the benefits from liberalization can only be derived by developing countries if accompanied by supportive capacity-building measures.

30. With regard to industrial subsidies, there would appear to be a bias against developing countries in the Agreement on Subsidies and Countervailing Measures. Non-actionable subsidies, as defined in this Agreement, are those which form part of the industrial and regional development policy in developed countries, while subsidies of key importance to developing countries fall into the actionable category. Furthermore, the non-actionable nature of subsidies for research and development permits firms in developed countries access to subsidies for the development of new products, for which they are subsequently given a monopoly under the Agreement on Trade-related Intellectual Property Rights (TRIPs). In addition, the fiscal investment incentives offered by the Governments of developed countries to attract investment, often at subnational levels, are not effectively disciplined since it is often impossible to calculate the *ad valorem* benefit of such subsidization. Since retaining subsidies for research and development in the non-actionable category requires consensus, developing countries have the opportunity to correct this imbalance.

31. Given the major difficulties confronted by developing countries in the implementation of the TRIPs Agreement, the following matters merit consideration: (a) extension of the transitional period to provide additional time required for domestic industries to adjust, given the broadness and complexity of the reforms of laws on intellectual property rights; (b) lack of technical and financial support to develop rules on intellectual property rights adapted to domestic circumstances and stage of development and to develop the necessary institutional infrastructure; (c) adoption of specific measures facilitating the use of compulsory licensing as a means of ensuring the transfer of technology (including environmentally sound technology), and of meeting public health concerns (e.g., compulsory licensing regime for drugs on the Model List of Essential Drugs of the World Health Organization (WHO)); (d) shortening the term on patents, to bring the TRIPs Agreement into line with the Convention on Biodiversity;[16] and (e) inclusion of new provisions in the TRIPs Agreement, relating to the protection of traditional and indigenous knowledge and works of folklore. In addition, provisions should be made to prevent any restriction on parallel imports. The TRIPs Agreement should be clarified to explicitly prohibit any rules and practices that amount to unilateral retaliation based on issues concerning intellectual property rights.

32. Increased public awareness is leading to a greater proliferation of standards, technical regulations, and sanitary and phytosanitary measures with the potential for an increasing number of trade barriers to be erected against those developing countries whose products do not conform. These scientific barriers have already become subject to dispute in WTO. Ways should be found to enable developing countries to participate more effectively in the formulation of international standards, a very costly process, and gain access to mutual recognition agreements concluded progressively among developed countries (and which discriminate against developing countries), as well as to meet sanitary and phytosanitary regulations. As in the supply of services, developing countries need extended and much more focused financial and technical assistance in order to build their own effective capacities.

33. The scheduled review of the Agreement on Trade-related Investment Measures (TRIMs) is to determine whether it should be complemented with provisions on investment and competition policy. Broader aspects of investment policy could relate to consideration of GATS-style market access commitments and/or negotiating disciplines on investment in the context of other WTO agreements. An extension of disciplines on the use of certain trade-related investment measures currently permitted by the WTO rules, such as export performance requirements, could constrain the use of policy instruments that could be effectively applied by developing countries to develop sectors and industries with an export potential. In this light, emphasis must be given to building up strong developing country enterprises able to compete in the world market for both goods and services. The importance of investment performance requirements for the development programmes of developing countries and their right to impose such requirements should be recognized and carved out in any future negotiations.

34. While competition policy is considered a new theme for the third WTO Ministerial Conference, rules dealing with competition policy can be found in the WTO Agreements, including TRIMs, GATS, TRIPs and the annex on telecommunications. In the TRIMs negotiations, developing countries were successful in maintaining a symmetry between future work on investment policy and competition policy. The merger mania which is sweeping the world would suggest that the need for more general multilateral rules on competition policy must be considered even more

seriously than in the past. Such rules can also provide an alternative to anti-dumping actions.

35. Any multilateral agreement on competition policy would have to take fully into account special and differential treatment of developing countries, as unanimously agreed in the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,[17] adopted by the General Assembly. Such treatment could encompass the right for developing countries to exempt sectors from their national competition rules for development reasons. Such exceptions and exemptions still exist in most developed countries, so it is not anachronistic for developing countries to follow the same path. A multilateral agreement on competition policy would be in the interest of developing countries if it could effectively protect them from abuses of dominance, while at the same time affording them with some reasonable flexibility in applying the rules. This would result in striving for an equitable playing field in lieu of a level playing field, that is, one that sets equal rules for different players.

36. Another priority should be aimed at providing developing countries with a justified degree of flexibility, including the adaptation of special and differential treatment in their favour to the realities of globalization and development strategies. The underlying reality necessitating special and differential treatment in favour of developing countries has not changed in the period since the Uruguay Round. The disparity in per capita income between developed and most developing countries has actually increased since 1980, and many developing countries have fallen into the least developed category. Even those developing countries that have achieved growth success have nevertheless had their vulnerability demonstrated by the financial crisis. Developing countries also confront major handicaps in implementing their multilateral trade obligations and in deriving benefits from world trade and from the trading system.

37. As the pressure to extend the frontiers of the trading system continues, there is a need to preserve the right of developing countries to take certain measures as essential components of their development policies. Rather than relying on artificial and arbitrary time-frames unrelated to need or performance, the expression of special and differential treatment should be linked to specific economic and social criteria. There should be an understanding at the beginning of new trade negotiations that such provisions would be included where a clear case for their need could be demonstrated.

38. For example, this could include examination of the following broad policy lines relating to special and differential treatment: (a) basic rights of developing countries under article XVIII, part IV and the Enabling Clause, which remain integral parts of the General Agreement on Tariffs and Trade 1994; (b) extension of the Enabling Clause to cover also the South-South provision of non-reciprocal preferences to the Least Developed Countries; (c) adequacy of transitional periods in some WTO agreements that would be phased out by 2005 or earlier; (d) revision and improvement of special and differential treatment provisions in WTO agreements, on the basis of experience accumulated in their implementation (e.g., establishment of new thresholds in the application of the anti-dumping measures to safeguard the export interests of developing countries); (e) elaboration of additional special and differential treatment provisions providing emphasis on supply-side measures in order to foster the development of internationally competitive export supply capabilities and to encourage product diversification; (f) linkage of further trade liberalization to transfer of technology requirements; and (g) definition aspects of special and differential treatment for the least developed countries, and small and vulnerable States in order to redress their marginalization.

39. Achieving the universality of the multilateral trading system should be a major objective of new negotiations. The acceding countries are, however, facing substantial difficulties in their attempt to benefit from some of the special and differential treatment provisions in the WTO agreements. The negotiation of transitional periods, for example, is being strongly resisted by major developed countries. The acceding countries are also being required to accept obligations going beyond those of the original WTO members or the WTO agreements, for example, in areas such as agriculture, privatization, export tariffs and the acceptance of optional plurilateral trade agreements. Moreover, they are confronting excessive requests to liberalize market access in goods, and especially in services, which may not be consistent with their present development needs. The approach to acceding countries is often motivated by geopolitical strategies and concerns to establish precedents. These imbalances should be corrected to avoid fragmentation of the trading system in terms of different rights and obligations for original members and newly acceded countries. All acceding countries should be allowed to participate in the new multilateral trade negotiations, as proposed by the European Union in the WTO preparatory process.[18]

40. The financial crisis once again brought into the picture relationships among trade, finance and development. The

trading system is being severely strained by the current financial turmoil. To achieve greater coherence in global economic policy-making, which is one of the functions of WTO, and make it more operational, WTO rules and disciplines should be taken fully into account by the international financial institutions when designing macroeconomic programmes and rescue packages for individual countries. Developing countries are traditionally confronted with weak institutional capabilities and a lack of resources for sustaining effective mechanisms for the formulation and coordination of trade policies. Financial assistance could be an important element in the future to enable developing countries to implement the obligations and exercise their rights. Developed countries have traditionally resisted any notion that the multilateral trade agreements include financial windows. Practice, however, has demonstrated that, without such assistance, the possibilities of many developing countries fully meeting their obligations and effectively exercising their rights is very limited. In order to strengthen the credibility of a rules-based multilateral trading system, an attempt should be made during new negotiations, to assess the administrative and financial burden of fulfilling multilateral trade obligations. For example, where new multilateral disciplines are accepted, there should be an implementation audit to estimate the financial and administrative cost of implementation for developing countries.

41. As at mid-1998, more than 100 regional trade agreements were in force. The interface between regional and multilateral activities has become one of the main issues for the trading system[19] which is, in particular, reflected in a number of proposals made by WTO members in the preparatory process for the third Ministerial Conference. An UNCTAD analysis of preferential arrangements in favour of developing countries revealed that there is still scope for commercially meaningful non-reciprocal trade preferences, in particular in favour of the least developed countries. The Generalized System of Preferences and other preferences (like those accorded by the Lomé Convention) should therefore be preserved and improved, and effectively utilized. Gradually, such preferences will be eroded by multilateral and regional trade liberalization, but withdrawing preferential treatment would only serve to penalize weaker countries and those excluded from North-South integration agreements, and lead to their further marginalization. Subregional and regional integration among developing countries is a positive process contributing to trade liberalization at the multilateral level. It enables the participants to develop the competitiveness necessary for their integration into the world economy. Likewise, developing countries have an interest in ensuring that large economic spaces formed by major developed trading nations are open and outward-oriented, in the sense of promoting growth of the global economy and the integrity of the multilateral trading system. Free trade agreements between developing and developed countries may call for a revision of article XXIV of the General Agreement on Tariffs and Trade 1994, including an extension of the ten-year period for interim agreements in order to give developing countries more time to adapt and improve their competitiveness.

42. Since the establishment of WTO and as at 16 June 1999, 166 complaints had been received by the WTO Dispute Settlement Body. The work of the Dispute Settlement Body reflected the fact that members continued to show confidence in the dispute settlement mechanism. The proper functioning of the Body clearly contributed to the strengthening and consolidation of WTO and the multilateral trading system. A few highly publicized cases in 1999, however, in which parties to the disputes were major developed countries, demonstrated the need to clarify certain important provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes. In this context, the Dispute Settlement Body began a full review of rules and procedures under the Understanding, while some WTO members considered that the improvement of the Understanding should be the subject of new multilateral trade negotiations. Of 166 complaints, 132 were made by developed countries and 34 were initiated by developing countries that had experienced substantial deficiencies in capacity and considerable financial constraints in effectively defending their rights in the Dispute Settlement Body. In the year 1998-1999, the major goods sectors involved in the dispute settlement proceedings included agricultural products (meat, fishery and dairy products), textiles and clothing, machinery and electrical equipment and automobiles and aircraft. The main substantive issues involved were related to the interpretation of the provisions of the General Agreement on Tariffs and Trade 1994 and other WTO agreements on national treatment, anti-dumping duties, countervailing duties, transparency, elimination of quantitative restrictions, non-discrimination, technical barriers to trade, sanitary and phytosanitary measures, trade-related investment measures and government procurement.

43. Until the end of 1998, several dispute settlement panels had ruled that various environment-related trade measures could not be justified under article XX of the General Agreement on Tariffs and Trade 1994, on exceptions. These include the two tuna and dolphin cases of 1991 and 1994, the reformulated gasoline case of 1996 and the panel decision on shrimps and turtles of April 1998.[20]

Nevertheless, there have been important developments in the dispute settlement mechanism. Some have welcomed these as a demonstration that the rules of the multilateral trading system are flexible enough to take account of environmental factors. Others, however, in particular developing countries, have expressed renewed concern about the use of unilateral measures, in particular those based on non-product related process and production methods. Most of the attention was focused on the panel and appellate body decisions on shrimps and turtles.

44. In October 1998, the WTO Appellate Body rendered a ruling on the United States import ban on shrimp captured with methods deemed harmful to endangered species of marine turtles, following a United States appeal against a panel ruling of April 1998, which concluded that the ban was not consistent with the relevant article of the General Agreement on Tariffs and Trade 1994.[21] Although the Appellate Body came to the same conclusion as in previous dispute settlement cases, this conclusion was reached based on a very different reasoning which departed from the previous perception of such panels. The Appellate Body gave some new findings on matters that the original dispute settlement panel had not dealt with, in particular subparagraph (g) of article XX of the General Agreement on Tariffs and Trade 1994, which tolerates trade measures that relate to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

45. First, the Appellate Body concluded that the United States measure was provisionally justified under subparagraph (g) by considering turtles as an exhaustible natural resource. The Appellate Body argued that the term "exhaustible natural resource" was not static in its content and could therefore no longer be confined to exhaustible mineral or other non-living resources. Article XX, subparagraph (g), would therefore also apply to the protection of living species. In some previous panels, environmentally motivated trade restrictions had been tested against article XX, subparagraph (b), requiring that a trade measure be necessary to protect human, animal or plant life or health. Article XX, subparagraph (g), does not contain such a requirement. The panel had only considered the headnote of Article XX. Second, the Appellate Body emphasized that WTO rules did not prevent a panel from accepting unsolicited *amicus curiae* briefs submitted by non-governmental organizations. This interpretation of article 13 of the WTO Understanding was questioned by several developing countries. The Appellate Body made this determination even though the language of article 13 refers to a panel's right to seek information, and the original panel had clearly not sought unsolicited information.[22]

46. The Appellate Body concluded that the United States measure was falling within the exception covered by subparagraph (g) of article XX, but went on to state that any recourse to an exception had to satisfy the requirements of article XX in that it should not be applied in a manner constituting an arbitrary or unjustifiable discrimination between countries where the same conditions prevail or be a disguised restriction on international trade. It was against this that the Appellate Body found the United States measure flawed. The Appellate Body concluded that the United States measure had an unjustifiably coercive effect on policy decisions made by foreign Governments. The measure did not assure that it was appropriate for the specific local and regional conditions prevailing in other countries. In particular, the United States had not seriously attempted to reach a multilateral proactive solution to the problem. The United States had applied different phase-in periods for the Caribbean and western Atlantic region and other developing countries, and had also made far greater efforts to transfer the required technology to the former. Lastly, the United States certification process was found to be not transparent, or predictable. In summary, the Appellate Body rejected the United States appeal based on the flawed implementation of the environmentally motivated trade measure, and not because of its nature and purpose. If the United States Government had made use of the flexibility in the provisions of section 609 of the Endangered Species Act and had initiated negotiations for the development of bilateral or multilateral agreements with other nations, its appeal would have been unlikely to have been turned down by the Appellate Body.

47. In paragraph 18 of its resolution 53/170, the General Assembly reiterated that, in line with Agenda 21[23] and the Rio Declaration on Environment and Development,[24] Governments should have as their objective to ensure that trade and environmental policies are mutually supportive so as to achieve sustainable development. Progress has been made in enhancing the understanding of trade and environment linkages, both through policy dialogue and attempts to strengthen policy coordination at the national level, including in developing countries, as well as through multilateral deliberations, for example in WTO, UNCTAD and the United Nations Environment Programme (UNEP). The increased involvement of civil society, including that of non-governmental organizations, the business community and academic institutions has contributed to a more informed and participatory debate. Many developing countries, however, continue to face important constraints in

responding to environmental challenges, such as the lack of technical, institutional and supply capacities.

48. The conventional approach to changing consumption and production patterns in developed countries was too often reactive and discriminatory, with policy characterized by product bans and consumer action focused on boycotts. Little thought went into the trade implications for developing countries, and the result often bordered on protectionist measures. There is, however, more recognition of the need to switch from a unilateral imposition of social and environmental preferences to a partnership approach. This approach implies the forging of new trading relationships among producers in developing countries and their clients, citizens groups and governmental agencies in developed countries. It accepts the need for more time and support for developing country producers to make the transition to higher standards. It involves taking a proactive stance towards the opportunities for using the marketplace as an arena for promoting innovation in environmental performance.

49. The WTO Committee on Trade and Environment has an important role to play in promoting a balanced approach to the trade and environment debate, by ensuring that the issues involved receive adequate attention. It should also ensure that clarification is based on a broad consensus. Similarly, UNCTAD, the Commission on Sustainable Development and UNEP should help to ensure that trade and environment issues are considered in the broader context of sustainable development. The United Nations Conference on Trade and Development at its tenth session and the Commission on Sustainable Development, at its eighth session to be held in spring 2000, should promote a balanced approach to the trade and environment debate through an integrated examination of linkages among trade, investment, technology, finance and sustainable development.

50. Environmental requirements with potential trade effects are becoming more frequent, including in sectors of export interest to developing countries. To help avoid adverse trade effects on developing countries, there is a need to ensure the adequate provision of information, capacity-building and access to and transfer of environmentally sound technologies, in particular for small and medium-sized enterprises. Bilateral and multilateral cooperation should assist developing countries in establishing or improving supportive infrastructure. In addition, the rules and principles of the multilateral trading system must ensure that environmental policies and measures do not have unnecessarily adverse effects on trade, in particular exports from developing countries. It is particularly important to avoid unilateral actions which have an extraterritorial application.

51. There has been increased focus on capacity-building, including that in favour of the least developed countries. The objectives are: (a) to facilitate a dialogue among the trade, environment and development communities; (b) to strengthen capacities for policy analysis and trade and coordination of environmental policies in developing countries; (c) to assist developing countries in taking advantage of new trading opportunities; and (d) to support the effective participation of developing countries in international deliberations on trade and environment.

52. The UNCTAD secretariat has been working on the identification of elements for a positive agenda on trade and environment so that if and when trade and environment issues come up for negotiation in WTO, developing countries can play a more constructive role and pursue an agenda that yields benefits to them. Any further integration of environmental considerations into the multilateral trading system with a view to enhancing sustainable development should, however, be achieved in a balanced manner and take full account of the environmental and developmental conditions and needs of developing countries. It should also be based on multilateral cooperation and the principle of common but differentiated responsibilities. The best way to achieve this is by promoting positive interaction among economic activities, the multilateral trading system and the environment, and not by accommodating measures that might restrict trade from developing countries. Cooperation with UNEP has focused on the exchange of information and analysis, as well as joint briefings and capacity-building activities.

53. Capacity-building efforts also benefit from contributions by bilateral donors. For example, under a technical cooperation project funded by the Department for International Development of the United Kingdom of Great Britain and Northern Ireland, and implemented in cooperation with the Foundation for International Environmental Law and Development, the UNCTAD secretariat is working closely with a core group of policy makers from both the trade and environment ministries in 10 developing countries.[25] The project aims to assist these countries in enhancing understanding of the complex linkages between trade and environment, promoting policy coordination at the national level and participating effectively in multilateral deliberations on trade and the environment in WTO, UNCTAD and other forums.

V. Other issues arising from General Assembly resolution 53/170

Coherence, complementarity and coordination of global economic policy-making

54. Trade and finance are particularly important areas in which coherence and complementarity in the formulation of different policies are essential for global growth and development. Indeed, it has long been recognized that stable exchange rates and a steady expansion of income and employment are preconditions for an open trading system. By the same token, access to global markets that are expanding at a steady, sustained rate is crucial in allowing countries confronting external payment difficulties to undertake positive adjustment in the context of economic expansion rather than contraction. The increasingly frequent and virulent systemic breakdowns in the operation of international financial markets associated with financial liberalization and deregulation are, however, generating frictions in the international trading system not only by producing instability of exchange rates and frequently drastic shifts in international competitiveness but also by promoting deflationary forces whereby adjustments to crises take the form of economic contraction and import cuts rather than export expansion. Misalignments of exchange rates and trade imbalances owing to domestic economic policies that were introduced without concern for their impact on the global economy are generally acknowledged to be a major source of protectionist pressures which manifest themselves both in unilateral national measures and in tensions threatening the rules of the multilateral trade regime. Thus, the inconsistency in the requirements of the trade regime and the operation of international financial markets is often an impediment to the realization of the potential benefits of globalization and is capable of disrupting the system of international economic relations that underpins the process. Overcoming this inconsistency requires effective global policy action designed to prevent financial crises and to manage them better when they do occur. This issue is discussed in greater detail in the report of the Secretary-General submitted to the General Assembly in response to Assembly resolution 53/169 of 15 December 1998, on the role of the United Nations in promoting development in the context of globalization and interdependence.

55. During recent years, there has been an increase in both the number and strength of the economic links among countries and of the interaction among different areas of economic and development policy. This increase is integrally related to globalization, understood as a process involving not only increased cross-border flows of goods and services but also the emergence of the changed institutions and perceptions needed to manage the new system of economic and social relations that are the counterpart of these flows. Many developing countries have based their development strategies on increasing integration into the global financial and trading systems through liberalization of their economies. This has involved opening domestic markets to foreign producers, the development of more open domestic financial markets, and the reduction of the role of government in the provision of goods and services and the allocation of financial resources. The result has been an increase in the share of external trade in national income, an increase in inflows of foreign capital, and the international diversification of the portfolios of domestic wealth owners.

56. The growth in global interdependence resulting from these trends poses problems for the coherence, complementarity and coordination of global economic policy-making, which have been widely recognized.[26] These problems comprise those arising from interaction among the policies of different countries in the same area and among policies in different areas, as well as from the differing mandates and jurisdictions of international institutions. For example, the ability of developing countries to achieve their growth potential, to close the gap in per capita income with the developed world and to maintain macroeconomic stability is significantly determined by macroeconomic policies pursued by the major industrial countries. Likewise, the scale and stability of flows of foreign direct investment and other forms of external financing, such as bank lending and portfolio investment, depend, *inter alia*, on the prospects for economic activity and international trade, and on conditions in currency markets and the markets for other financial assets. Yet efforts to improve coherence, complementarity and coordination of policies in these diverse but interrelated areas remain sporadic and frequently ineffectual. Moreover, these efforts must also rely on a set of international institutions, the compartmentalization of whose mandates and jurisdictions is not designed for the proper consideration of certain key connections among different issues and appropriate policy responses in different areas.

57. There can be little question that the increased interdependence of developed and developing countries has made trade and finance two key areas in which the introduction of coherent and complementary policies can help to achieve the maximum benefits of global growth and development. In these areas, it is possible to identify policy

objectives that serve the interests of both developed and developing countries. For example, it has long been recognized that stable exchange rates and the steady expansion of income and employment are preconditions for the maintenance and development of a more open system of international trade. In some quarters, there is a tendency to blame the problems of unemployment and low pay on the growth of international trade and investment. The solutions advocated include the imposition of higher labour standards in the developing world or more open protectionism in the form of barriers to imports. Neomercantilist approaches of this kind would prevent integration from yielding their benefits. Moreover, while all countries would be adversely affected, the threat to developing economies and those in transition would be particularly serious, since their outward-oriented development strategies can succeed only if markets in developed countries are sufficiently open.

58. Thus, avoidance of disruptive tensions in the trading system requires successful employment policies in industrial countries. Much attention in recent years has been devoted to the microeconomic dimension of such policies. While deregulation of labour markets, training and skill formation, and tax policies and employment subsidies are all capable of reducing bottlenecks and other constraints on economic expansion, evidence suggests that successful employment policies in industrial countries depend crucially on the stance of their macroeconomic policies. Slow growth or stagnation associated with the prevalence of restrictive macroeconomic policies thus also tends to intensify protectionist pressures. Furthermore, steady, sustained growth in world trade is essential to allowing countries facing external payments difficulties to undertake positive adjustment in the context of domestic economic expansion and growth in incomes, rather than contraction.

59. Fluctuations in economic activity linked to these recurring financial crises not only adversely affect longer-term prospects in developing countries (through their impact on such variables as investment) but can also have a severe impact on immediate living standards in countries in which much of the population is not far from the margin of subsistence. Moreover, many developing countries are particularly vulnerable to unfavourable changes in external economic conditions owing to the small size of their economies, their specialization in a limited number of export products (usually primary commodities) and geographical constraints, such as being landlocked and lacking good access to the physical facilities required for international trade.

60. The link between external financial policies and international trade is recognized in various articles of GATT and GATS. For example, there is provision in both agreements for trade restrictions as a response to balance-of-payment problems, and the relevant articles specify procedures for evaluating the justification of such restrictions and the role of the International Monetary Fund in this process. The Agreements do not, however, provide ways to deal with adverse mutual interaction between trading and financial problems. For example, misalignments of exchange rates, which may result from instability in currency markets, can be a source of tensions in trading relations. Indeed, during relatively short periods, the real effective exchange rates of countries frequently vary by amounts which are large in percentage terms in comparison with their average tariff levels, and the resulting changes, even away from equilibrium levels for their exchange rates, may persist for some time. Thus, the economic impact of movements in exchange rates can substantially exceed that of multilaterally agreed tariff changes (even though the estimated elasticities of trade flows with respect to tariff changes are considerably higher than those with respect to variations in exchange rates). Yet, the articles of GATT contain no provision for responses to the distortionary effects of misalignments of exchange rates analogous to those for subsidies or dumping.

61. While interaction among the areas of trade, finance and macroeconomics has traditionally been at the centre of consideration of coherence, complementarity and coordination in global policy-making, other issues are assuming growing importance under these headings as broader and deeper economic integration extends the range of subjects that frameworks of rules for international economic relations are forced to confront. These include, for example, the interaction (to which allusion has already been made) among policies in the area of macroeconomics and finance, and those directed towards poverty; policies regarding debt reduction and concessional flows, and those on trade (including, under the latter, the question of the extent to which protectionism in industrial countries increases the likelihood of, or exacerbates, the debt problems of developing countries); and policies for trade liberalization, on the one hand, and the financial support required for their successful implementation, on the other. In such areas improved coherence, complementarity and coordination in global policy-making require recognition of the relevant nexus and, in some cases, reformed institutional arrangements facilitating this recognition and the policy actions that it indicates as necessary.

62. Steps to improve coherence, complementarity and coordination should reflect broadly based consensus and not unilaterally imposed views of particular parties. For example, cross-conditionality should be avoided between the terms on which financing is available from international financial institutions and the rules of regimes which are the purview of other institutions or agreements (concerning, for example, the liberalization of international trade or investment). Such cross-conditionality could be perceived as incompatible with national sovereignty and not justified for the purpose of overcoming, or achieving a solution to, the problems leading to a country's application for external financial support. Thus based on consensus, arrangements enabling improved coherence, complementarity and coordination in global policy-making can avoid unnecessary divisiveness and conflict while promoting fruitful forms of international economic cooperation.

Investment agreements

63. The work of UNCTAD on investment agreements continued to help developing countries and economies in transition participate as effectively as possible in international discussions on investment rule-making, be it at the bilateral, regional, plurilateral or multilateral level. Studies published by the UNCTAD under the *International Investment Agreements Issues Papers* series address key concepts and issues relevant to international investment agreements, with particular attention given to the way in which the key issues have been dealt with so far in existing international investment agreements and to the needs and concerns of developing countries. Each paper addresses the following questions: How is the concept or issue defined? How has it been used in relevant instruments to date? What are the principal economic implications, especially for development and under conditions of liberalization? How can the positive implications for development be maximized? On the basis of a review of current efforts in the area of international investment rule-making, regional symposia for decision makers have been organized. They focus on key concepts and issues relevant to discussions on international investment agreements. A series of seminars was also launched at Geneva, in cooperation with WTO. Each seminar commences with an in-depth examination of the economics of foreign direct investment and its implications for development, and concludes with an examination of key concepts and issues of importance to international investment agreements. The faculty for the regional symposia and the Geneva seminars includes experts from academia, the business community, trade unions and non-governmental organizations.

64. Training courses on foreign direct investment are being developed for diplomats and governmental officials and are designed to give participants more knowledge about foreign direct investment and issues related to such investment. In addition, an intensive training course is being developed for a core group of negotiators from developing countries involved in discussions relating to international investment agreements. The *International Investment Agreements Issues Papers* series will be part of the training package, which will also comprise lectures, case studies, sharing of experience and simulation exercises. The secretariat of UNCTAD organized jointly with the Technical Support Facility of the Group of 15 and the Special Unit for Technical Cooperation among Developing Countries of UNDP a forum for bilateral negotiations of bilateral investment treaties among countries members of the Group of 15. The work programme is embedded in UNCTAD policy-oriented research in the area of foreign direct investment and, in particular, its *World Investment Report* series and several topical studies, for example, those on incentives and bilateral investment treaties. The *World Investment Report 1998: Trends and Determinants*[27] reported on international developments in the area of investment and contained a brief assessment of a possible multilateral framework on investment as a determinant of foreign direct investment.

Landlocked countries

65. The secretariat of UNCTAD has played an important role in developing a technical assistance programme concentrated on improvement of operational performance along the transit corridors, strengthening of the negotiating capabilities of landlocked developing countries vis-à-vis their transit neighbours, development of alternative routes, simplification and application of national and inter-state transit aligned documents, promotion of bilateral, regional agreements and international conventions, human resources and institutional development, and building up consensus on cooperative arrangements among key players of transit transport. A number of landlocked and transit developing countries benefit from the Automated System of Customs Data Entry, Control and Management (ASYCUDA) and the Advanced Cargo Information System (ACIS).

66. The General Assembly, by its resolution 52/183 of 18 December 1997 on specific actions related to the particular needs and problems of landlocked developing countries, requested the Secretary-General of UNCTAD to convene in

1999 another meeting of governmental experts from landlocked and transit developing countries and representatives of donor countries and financial and development institutions. The meeting was scheduled to be held in New York, from 23 to 26 August 1999 and will mainly address transit transport costs and transit trade procedures. Data suggests that on average, landlocked developing countries spend 17.7 per cent of their export earnings on transport services, compared with an average of 8.7 per cent for all developing countries. Broad participation of experts from landlocked and transit developing countries in the meeting was considered to be essential, *inter alia*, to review the progress made and build up a consensus on action-oriented measures to further reduce transport costs and improve trade facilitation at the national and subregional levels.

Small island developing States

67. The importance of generating a greater understanding of the impact of trade liberalization and globalization on small island developing States was reiterated in April 1999 by the Commission on Sustainable Development in its global review of the implementation of the Programme of Action for the Sustainable Development of Small Island Developing States.[28] The secretariat of UNCTAD pursues three main goals with a view to helping such States to avoid marginalization from the global economy: (a) assisting small island developing States in their efforts to circumvent their intrinsic competitive handicaps, which mainly stem from disadvantages of smallness and remoteness, and are fundamental causes of the lack of diversification and poor specialization of many such economies; (b) enhancing their capacity to take advantage of new trading opportunities in the context of trade liberalization and globalization, in particular, vis-à-vis relevant niche markets and in the area of international services of special interest to them; and (c) facilitating recognition of the economic vulnerability of many small island developing States to a variety of external shocks, with a view to encouraging the provision of special concessions to them (especially those that are not among the least developed countries) in terms of access to foreign markets and foreign finance, in order to help these countries to overcome their competitive disadvantages. To that end, UNCTAD prepares vulnerability profiles of individual small island developing States on which specific information is deemed necessary to allow better consideration by the international community of the need for concessional treatment.

68. In this framework, capacity-building by UNCTAD in favour of small island developing States can be summarized as follows: (a) global direct support to small island developing States in their preparation for the millennium round of multilateral trade negotiations; (b) research on issues of vulnerability and the impact of trade liberalization and globalization (a forthcoming publication will incorporate an updated version of the results of the work of UNCTAD in this area; (c) technical assistance is extended to individual least developed small island developing States in their preparation for round-table meetings under the integrated framework resulting from the 1997 High-Level Meeting on Integrated Initiatives for Least Developed Countries' Trade Development (direct assistance is also provided in the preparation of projects); and (d) other technical assistance proposals involve subjects relating to trade and investment policies, trade efficiency, and sectoral action relevant to international trade in services.

Contribution of the United Nations Conference on Trade and Development to the implementation of the United Nations New Agenda for the Development of Africa in the 1990s

69. The contribution of UNCTAD to the implementation of the United Nations New Agenda for the Development of Africa in the 1990s[29] is considered by the Trade and Development Board at its annual sessions, at which a substantive debate is organized on a specific topic with respect to Africa's development, its growth performance and prospects. In 1999, the UNCTAD secretariat prepared a report on African transport infrastructure and competitiveness (TD/B/46/10). This report contains an analysis of problems related to the high cost of transport for African trade competitiveness, export performance and market development. It also addresses questions related to the financing of transport infrastructure projects, including both the role of private and public finance in this regard. The report also considers the case for a regional approach to transport infrastructure financing.

70. Further, the Board, at its twenty-first executive session, undertook a review of UNCTAD activities in favour of Africa, based on a report prepared by the UNCTAD secretariat (TD/B/EX(21)/2) which provided a perspective on the general thrust of research and analysis being undertaken by UNCTAD, as well as a summary of specific activities, including advisory services and technical cooperation.

Notes

[1] See the joint study by the secretariats of UNCTAD and WTO on the post-Uruguay Round tariff environment for exports of developing countries (TD/B/COM.1/14) and the report prepared by the secretariats of UNCTAD and WTO on market access: developments since the Uruguay Round, implications, opportunities and challenges, in particular for the developing countries and the least developed among them, in the context of globalization and liberalization (E/1998/55, annex).

[2] Note by the WTO secretariat on tariff escalation (WT/CTE/W/25).

[3] "The impact of the Uruguay Round on tariff escalation in agricultural products", by Jostein Lindland (FAO, ESCP No. 3, Rome, April 1997).

[4] World Trade Organization, *Annual Report 1998* (Geneva, 1998).

[5] The main initiators among the developing countries are Argentina, Brazil, Colombia, India, Indonesia, Malaysia, Mexico, Peru, the Philippines, the Republic of Korea, South Africa, Thailand, Turkey and Venezuela.

[6] See the overview of developments in the international trading environment: annual report of the Director-General of WTO (WTO document WT/TPR/OV/4).

[7] In particular, there were various developments affecting the steel market, with a surge in anti-dumping and countervailing measures pursued by several developed countries in 1998-1999.

[8] These include trade and investment; trade and competition policy; transparency in government procurement and trade facilitation.

[9] See the documents of the thirty-third Quadrilateral Trade Ministers Meeting, held at Tokyo, on 11 and 12 May 1999; the communiqué issued on 27 May 1999 by the Council of the Organisation for Economic Cooperation and Development meeting at the ministerial level; and the Final Communiqué of the Group of Eight Summit conference of Heads of State and Government, held at Cologne, Germany, from 18 to 20 June 1999.

[10] Argentina, Australia, Chile, Costa Rica, the Czech Republic, Hungary, Mexico, Morocco, New Zealand, the Republic of Korea, Singapore, Switzerland, Thailand and Uruguay as well as Hong Kong, China (see WTO document WT/GC/W/230).

[11] See the communication dated 8 July 1999 from the European Commission addressed to the Council of the European Union and the European Parliament, concerning the approach of the European Union to the millennium round.

[12] See the communication from the Dominican Republic, Honduras and Pakistan dated 16 July 1999 (WTO document WT/GC/W/255).

[13] See WTO document WT/GC/W/251.

[14] See WTO document WT/GC/W/195.

[15] Article 15 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

[16] See United Nations Environment Programme, *Convention on Biodiversity* (Environmental Law and Institution Programme Activity Centre), June 1992.

[17] See *Proceedings of the United Nations Conference on Trade and Development, Fifth Session*, vol. I, *Report and Annexes* (United Nations publication, Sales No. E.79.II.D.14), part one, sect. A.

[18] See WTO document WT/GC/W/153.

[19] See WTO document WT/TPR/OV/4, containing an overview of developments in the international trading environment.

[20] The original United States guidelines and ban pursuant to section 609 of the Endangered Species Act limited the scope of the import ban of shrimp to countries in the wider Caribbean and eastern Atlantic region, and granted these countries a three-year phase-in period. The 1993 guidelines also confined the required use of turtle excluder devices and the application of a certification process to the same region, whereas shrimp imports from other regions were allowed without any certification of the use of such devices. However, a 1996 ruling of the United States International Trade Court (upon the request of a United States non-governmental organization) extended this to shrimp imports from all regions. Under the guidelines put in place after the 1996 court ruling, the United States State Department has to certify that various countries involved in shrimp fishing use turtle excluder devices, and only imports from these countries are allowed entry into the United States market.

[21] The panel had upheld the complaints brought against the United States of America by India, Malaysia, Pakistan and Thailand, challenging the consistency with WTO rules of the United States import restrictions, based on section 609 of the United States Endangered Species Act and regulations issued under it insisting on protection and conservation of sea turtles through the use of turtle excluder devices, and banning imports of shrimp from countries not certified by the United States to be using such devices.

[22] Several observers suggest that, in practice, the acceptance of *amicus curiae* briefs benefits private sector associations more than environmental groups, because business interests lie behind most trade disputes. This is somewhat mitigated by the fact that panels are not required to accept or take account of private submissions. (See G. Shaffer, "The US shrimp-turtle appellate body report: setting guidelines toward moderating the trade-environment conflict", *Bridges between Trade and Sustainable Development*, vol. 2, No. 7, October 1998, pp. 9-12.)

[23] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

[24] Ibid., annex I.

[25] The 10 developing countries participating in the project are: Brazil, Costa Rica and Cuba (in Latin America); South Africa, the Republic of Tanzania, Tunisia and Uganda (in

Africa), and Bangladesh, India and the Philippines (in Asia). A seminar launching the project was held at Geneva on 24 and 25 June 1999.

[26] See, for example, "Declaration on the contribution of the World Trade Organization to achieving greater coherence in global economic policymaking", Ministerial Decisions and Declarations Adopted by the Trade Negotiations Committee on 15 December 1993 (reprinted in WTO, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, Geneva, 1995, pp. 442-443).

[27] United Nations publication, Sales No. E.98.II.D.5.

[28] *Report of the Global Conference on the Sustainable Development of Small Island Developing States, Bridgetown, Barbados, 25 April-6 May 1994* (United Nations publication, Sales No. E.94.I.18 and corrigenda), chap. I, resolution 1, annex II.

[29] General Assembly resolution 46/151, annex.